

ANNUAL REPORT ON AGENCY MANAGEMENT OF COMMERCIAL ACTIVITIES

The Environmental Protection Agency (EPA) is pleased to submit its Year 2002 Annual Report on Agency Management of Commercial Activities. This annual report, submitted in accordance with Office of Management and Budget (OMB) Circular No. A-76 and the Revised Supplemental Handbook (Appendix 2, paragraph I) (the "Circular" or "Revised Supplemental Handbook"), details the Agency's implementation of the requirements of the Federal Activities Inventory Reform (FAIR) Act of 1998 including the process of conducting EPA's 2001 Inventory of Commercial Activities, the results of the 2001 Inventory, the FAIR Act challenge and appeal process followed in 2001, and the current status of EPA's Year 2002 FAIR Act Inventory.

I. 2001 Inventory Process

EPA prepared the 2001 Inventory as required by the FAIR Act to provide a comprehensive report of all EPA potential commercial activities and the full time equivalents (FTEs) performing them in 2001. The 2001 Inventory was the result of a very careful and considered process of reviewing and measuring EPA's functions and activities against the criteria outlined in the FAIR Act, Circular A-76 and the Revised Supplemental Handbook, the Office of Federal Procurement Policy Letter 92-1, the Federal Acquisition Regulation 7.5, and any other relevant considerations. EPA's 2001 Inventory also followed the guidelines set forth in OMB's April 3, 2001 Memorandum by Sean O'Keefe, OMB's Deputy Director, for Heads of Executive Departments and Agencies regarding the Year 2001 Inventory. With the 2001 Inventory, EPA submitted a separate report listing EPA's inherently governmental functions in the same format and level of detail used for the 2001 Inventory.

As with EPA's 1999 and 2000 Inventories, EPA's Office of the Chief Financial Officer (OCFO), located at EPA's Headquarters in Washington, D.C., assigned the responsibility for developing the Agency's 2001 Inventory to the Agency's 12 program and 10 regional offices. EPA did this because it was believed that program and regional officials would be more knowledgeable and familiar with the Agency's specific activities and thus be in a better position to provide accurate designations for those activities in the 2001 Inventory. In addition, as part of the process of developing the 2001 Inventory, EPA convened an Agency-wide workgroup composed of headquarters, program and regional officials, and union representatives to emphasize the importance of assessing each Agency function and activity carefully against the relevant criteria. EPA Headquarters provided direction, oversight, resources, and counseling to assist the offices in developing their portions of the 2001 Inventory. Further, the offices' determinations were reviewed by OCFO for consistency and to ensure that the determinations made were reasonable and consistent with applicable guidance.

In its 2001 FAIR Inventory, as with its 1999 and 2000 Inventories, EPA followed its general rule that in the absence of specific OMB guidance, if less than 50 percent of a FTE's activities were inherently governmental, then the FTE was allocated between inherently governmental and commercial activities. If more than 50 percent of the FTE's duties were inherently governmental, the FTE was designated as inherently governmental. OMB did not object to the use of this methodology.

EPA submitted the 2001 FAIR Inventory, together with its report listing EPA's inherently governmental functions to OMB on June 30, 2001. As required under the FAIR Act and the Circular, the 2001 Inventory was subject to an OMB "review and consultation process." As part of this process, OMB reviewed the 2001 Inventory and voiced no objections to the structure, content, or format of the 2001 Inventory. On November 14, 2001, OMB published in the Federal Register a notice of public availability of the 2001 Inventory indicating that the 2001 Inventory was ready for public dissemination. This notice of public availability included EPA's website address to which EPA posted its 2001 Inventory (www.epa.gov/efinpage), together with the name and telephone number of EPA's central point-of-contact George Ames (202-564-4998).

II. 2001 Inventory Results

The results of EPA's 2001 Inventory identified approximately 3.2 percent, or 563.9 FTEs, out of a total of 17,631.1 FTEs at EPA as performing potential commercial activities. Pursuant to OMB guidance, EPA did not include FTEs from EPA's Office of Inspector General in the 2001 Inventory.

The majority of commercial functions (503.2 FTEs) on the 2001 Inventory represented core commercial capability functions (Reason Code A, per the Revised Supplemental Handbook) to be retained in-house. In reaching this conclusion, EPA considered the nature of the function, the degree of discretion exercised by individuals performing the function, the sensitivity and confidentiality of the information required to perform the function, and the significance of the function to core Agency activities and responsibilities. Furthermore, as a regulatory Agency, EPA also considered the need to maintain appropriate in-house knowledge, experience, and staffing capabilities to effectively apply, administer, implement, and enforce the nation's environmental laws in fulfilling EPA's mission and meeting complex, unique, sensitive, and emergency environmental requirements.

EPA further classified 54.7 FTEs on the 2001 Inventory as performing commercial activities which were exempted from the provisions of the Circular and the Revised Supplemental Handbook by Congress, Executive Order, or OMB (Reason Code C, per the Revised Supplemental Handbook). Moreover, the 2001 Inventory designated 4.0 FTEs as performing potential commercial activities that were subject to the cost comparison or direct conversion requirements of the Circular and the Revised Supplemental Handbook (Reason Code B, per the Revised Supplemental Handbook). The 2001 Inventory also classified 1.0 FTE as performing work in the process of being cost compared or directly converted to contract or inter-service support agreement performance (Reason Code D, per the

Revised Supplemental Handbook). Finally, the 2001 Inventory designated 1.0 FTE as performing work for which a review is pending force restructuring decisions (Reason Code F, per the Revised Supplemental Handbook).

The Agency's 2001 Inventory included all of the applicable data elements described in the Revised Supplemental Handbook and other relevant guidance. To further enhance the understandability of the 2001 Inventory, EPA linked commercial activities to Agency programs and performance by including an "EPA Goal" category. This category relates to the ten goals developed for the Agency's strategic plan pursuant to the Government Performance and Results Act and reflects the Agency's environmental priorities as articulated by Congress in the form of statutory mandates and authorities.

Further, in a letter accompanying EPA's 2001 Inventory, EPA presented the scope of current contracting efforts to provide context for the 2001 Inventory. EPA emphasized that the amount and variety of services that EPA currently obtains through extramural resources is very significant in relationship to the Agency's in-house staffing needs. As reported in 2001, EPA's extramural budget is 75 percent of its total dollars and requires a major commitment of FTEs to manage contracts, grants, cooperative agreements, interagency agreements, and senior environmental employees. In fact, in the past, the Congress and the General Accounting Office have criticized EPA for being too contractor dependent. Just a few years ago, EPA was even directed to undertake a contractor conversion effort where approximately 750 FTEs were brought back in-house.

III. Challenges and Appeals of the 2001 Inventory

EPA received one challenge to its 2001 Inventory. EPA's OCFO was the initial point of contact for challenge submissions. Offices whose FTEs were affected by the challenge provided detailed input into the written challenge decision, which was reviewed by both OCFO and the Agency's Office of General Counsel. EPA carefully and seriously evaluated the challenge in accordance with the criteria set forth in the FAIR Act, the Circular and the Revised Supplemental Handbook, the Federal Acquisition Regulation, and other relevant considerations. EPA denied the challenge it received with well-reasoned and responsive justifications in a timely manner. The challenge decision notified the interested party of its appeal rights.

EPA received one appeal of its challenge decision. The OCFO was also the initial point of contact for appeal submissions. Consistent with the Revised Supplemental Handbook, EPA's Administrator delegated the responsibility to receive and decide appeals to the Chief Financial Officer in OCFO. Again, the affected office provided detailed input into the written appeal decision which was reviewed by both OCFO and the EPA's Office of General Counsel. EPA denied the appeal with well-reasoned and responsive justifications, consistent with the relevant criteria, in a timely manner.

IV. The Year 2002 FAIR Act Inventory

EPA is developing its Year 2002 FAIR Act Inventory using the same process followed for its past inventories and consistent with OMB's supplemental FAIR Act guidance. This year, EPA will be providing a single inventory submission that reflects both EPA's inherently governmental FTE and commercial FTE by location and function. EPA appreciates the interest in its inventories and remains committed to contracting out wherever and whenever it is deemed appropriate.